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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK MORING RATHBURN,

Defendant and Appellant.

G050173

(Super. Ct. No. 13CF4030)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Elizabeth G. Macias, Judge. Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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We appointed counsel to represent defendant Patrick Moring Rathburn on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in defendant's own behalf; the notice was sent to the only known address for defendant. That period has passed, and we have received no communication from defendant, but we did receive a return to sender notice with the message, PAROLED/DISCHARGED." Our attempts to find a current address have been fruitless.

Defendant was charged with possession of a controlled substance in correctional facility in violation of Penal Code section 4573.6. Defendant thereafter informed the trial court that he did not wish to be represented by an attorney, and thereafter initialed, signed and filed a waiver of his right to representation by counsel.

A few weeks later, defendant appeared before the court. As he was the only party in the courtroom at the time, the court asked the prosecutor in open court whether or not there was an offer. The following statements were made by the prosecutor, the court and defendant:

The prosecutor: "Mr. Rathburn and I spoke briefly before the court took the bench. That's the People's offer. I am not inclined to strike the strike. I am noting Mr. Rathburn is the only individual who is in custody at this time and the courtroom is empty except for personnel. [¶] . . . [¶] The defendant has four prior felonies: 273.5 in '03; hit and run and evading and PC 69 in '07; 245 (a) force likely with a 273.5 in 2011 and then in a separate case a 245 (a) (1) with a vehicle being the weapon and a 273.5 which is the strike that's also from 2011. The defendant has served terms in prison of

two years, two years and three years. He also has a number of misdemeanors that are of concern and the People are not going to be striking the strike.”

The court: “So it would be your offer that he do 32 months at 80 percent, correct?”

The prosecutor: “That’s correct.”

The court: “Mr. Rathburn, in looking at this I would tend to think that ultimately you might be able to get a sentence without the strike in place just based on the nature of the charges, but I can only make that offer to you if the People are indicating that they are not going to take a writ if I offer 16 months which would be striking, but not dismissing the strike under 1385 (a) which still means 80 percent.”

The prosecutor: “I am not planning on taking a writ on whatever the court does with this case; however, I do oppose that given the defendant’s rap including the number of misdemeanors that also indicate violence.”

The court: “So Mr. Rathburn, if you want to resolve this case today, I am going to make the offer to you. You do 16 months, but [serve] 80 percent of it.”

Defendant: “Done.”

That afternoon, after the court advised him of his rights and defendant waived them, defendant pled guilty to the charge and admitted he suffered his prior convictions. In his signed guilty form, defendant submitted this factual statement: “In Orange County, California on Dec 21, 2013 I knowingly & wilfully possessed a usable quantity of methamphetamine while in the OC jail.” (Errors in original.) The court sentenced defendant to 16 months in state prison and “struck the strike for purposes of sentencing.”

We find nothing in this record that might provide a basis for appellate argument. The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.